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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 667

ATLANTIC CLEANERS AND DYERS, INC.; GLOBE DRY CLEANERS AND DYERS, ARCADE-SUNSHINE CO., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JANUARY 30, 1932

(36,481)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 23, 1932

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[fol. a] [Caption omitted]

[fol. 1]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT

In Equity. No. 49417

UNITED STATES OF AMERICA, Petitioner,

v.

ATLANTIC CLEANERS AND DYERS, INC.; GLOBE DRY CLEANERS AND DYERS, Majestic Cleaning and Dye Works, Inc.; The Mutual Cleaning Company, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein and Charles Rubenstein, John F. McCarron, Samuel Grozbean, Isidore Janet, Joseph A. Geier, Harry Viner, Samuel Goldenberg, Defendants

PETITION—Filed February 7, 1929

To the Judges of the Supreme Court of the District of Columbia:

Now comes the United States of America by Leo A. Rover, its Attorney for the District of Columbia, acting under the direction of the Attorney General, and brings this petition in equity against the following named defendants:

1. Atlantic Cleaners and Dyers, Inc., a corporation under the laws of the State of Delaware.

2. Globe Dry Cleaners and Dyers, a corporation under the laws of the District of Columbia,

[fol. 2] 3. Majestic Cleaning and Dye Works, Inc., a corporation under the laws of the District of Columbia.

4. The Mutual Cleaning Company, a corporation under the laws of the State of Delaware.

5. Arcade-Sunshine Co., a corporation under the laws of the State of Delaware.

6. Vogue Dry Cleaning Company, a corporation under the laws of the State of Delaware.

Each of the above named defendants has a principal place of business in the District of Columbia.

7. Samuel Rubenstein and Charles Rubenstein, both residents of the District of Columbia, and co-partners trading as Rubenstein Cleaning Company. Rubenstein Cleaning Company has a principal place of business in the District of Columbia.

8. John F. McCarron, a resident of the District of Columbia, and an officer and employee of Atlantic Cleaners and Dyers, Inc.

9. Samuel Grozbean, a resident of the District of Columbia, and an officer and employee of Globe Dry Cleaners and Dyers.

10. Isidore Janet, a resident of the District of Columbia, and an officer and employee of Majestic Cleaning and Dye Works, Inc.

11. Joseph A. Geier, a resident of the District of Columbia, and an officer and employee of The Mutual Cleaning Company.

12. Harry Viner, a resident of the District of Columbia, and an officer and employee of Arcade-Sunshine Company.

[fol. 3] 13. Samuel Goldenberg, a resident of the District of Columbia, and an officer and employee of Vogue Dry Cleaning Company.

Each of the above named individual defendants for a long time prior to the filing of this petition has actively participated in the management, direction and control of the affairs and business of the corporation defendant with which he has been affiliated, and especially of its trade and commerce hereinafter described; and each of said individual defendants has acted for the respective corporation defendant of which he is an officer or agent in the making of the agreements and in the doing of the acts and things herein alleged.

The above-named corporation defendants and Samuel Rubenstein and Charles Rubenstein, have been and are

engaged in, and together do substantially all of the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, at plants located therein, principally at wholesale and as master cleaners and dyers, and in pursuance of contracts and engagements between them and so-called retail dyers and cleaners; that is to say, with persons and corporations in the District of Columbia who are engaged in the business of, and who maintain stores or shops in said District for, receiving from the public clothing to be cleaned, dyed or otherwise renovated. Said retail dealers will be hereinafter referred to as Dealers. Said Dealers are so numerous that it is impracticable to set forth thir names herein.

[fol. 4] This petition in equity is brought by the United States of America to prevent the defendants from further engaging in and carrying out in the District of Columbia a combination and conspiracy in restraint of trade and commerce in the District of Columbia in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and of the common law.

The defendants have been and now are, at and within the District of Columbia, engaged in a combination and conspiracy in restraint of, and which throughout said period has unlawfully restrained the aforesaid trade and commerce in the manner herein set forth.

Heretofore, to wit, in August, 1928, the individual defendants arranged to and did meet together in the District of Columbia for the purposes hereinafter described; and at said meeting the defendants arranged, agreed, and mutually pledged themselves to raise the then current prices being charged and received by them for cleaning, dyeing, and renovating clothes; formulated, established, and agreed upon certain minimum and uniform prices, terms, and conditions which each and all of them should thereafter charge and receive for the performance of said service; arranged, agreed, and mutually pledged themselves not to contract or engage to perform the service aforesaid for less than said minimum and uniform prices, terms, and conditions; and [fol. 5] each and all of said defendants arranged, agreed, and mutually pledged themselves not to contract or engage

to perform said service at or upon prices, terms, and conditions independently fixed and established. The defendants, to wit, on September 10, 1928, raised the prices, terms, and conditions to be thereafter charged and received by them for cleaning, dyeing, and renovating clothing; since said date they have been and now are charging and receiving for performing the service aforesaid such increased prices, terms, and conditions; that is to say, said minimum and uniform prices, terms, and conditions agreed upon as aforesaid; and the defendants have refused and now are refusing to contract or engage to perform or to actually perform the services aforesaid at less than the minimum and uniform prices, terms, and conditions so agreed upon.

Heretofore, to wit, in August, 1928, the defendants arranged and agreed amongst themselves that a Dealer who had been trading or was currently trading with one of their number should be regarded and designated as the customer of that defendant with whom he had been or was so trading; and said defendants, by agreement, accordingly assigned and allotted such Dealers to one another to be held as exclusive customers, that is to say, defendants agreed that clothes to be cleaned, dyed, or otherwise renovated for Dealers so assigned and allotted should be done exclusively [fol. 6] by that one of their number to whom he had been assigned and allotted. And the defendants have arranged, agreed, and mutually pledged themselves that no one of them will contract or engage to, or will actually clean, dye, or otherwise renovate clothes for any Dealer whose business has not been assigned to him as aforesaid.

The defendants have made said assignments and allotments effective by refusing, and the fact is alleged to be that each of them has refused and now refuses, to contract or engage to clean, dye, or renovate clothes, or actually to perform such service for any Dealer assigned and allotted to another of their number as aforesaid.

Prayer

Wherefore petitioner prays:

That writs of subpœna issue, directed to each of the defendants, commanding them to appear and answer the allegations of this petition, but not under oath (answer under oath being hereby expressly waived), and to abide by

and perform such orders or decrees as the court may make in the premises.

And, further, that the court order, adjudge, and decree as follows:

1. That the defendants, by the acts and things hereinabove alleged, have been and are engaged in a combination and conspiracy in restraint of trade and commerce in the District of Columbia, in cleaning, dyeing, and otherwise [fol. 7] renovating clothes, in violation of the Act of July 2, 1890, and of the common law.

2. That the defendants and their agents be perpetually enjoined from further engaging in such combination and conspiracy; and particularly from further agreeing or making effective an assignment and allotment of the business of Dealers, and from further agreeing upon prices, terms, and conditions to be charged and received by them for cleaning, dyeing, and renovating clothes, and from doing any or all of the acts and things above described for effectuating and enabling them to observe said agreements.

3. That plaintiff have such other, further, and general relief as the nature of the case may require and the court may deem proper.

United States of America, by Leo A. Rover, United States Attorney. John G. Sargent, Attorney General. William J. Donovan, The Assistant to the Attorney General. Russell Hardy, Ralstone R. Irvine, Special Assistants to the Attorney General.

[fol. 8] In Supreme Court of District of Columbia

Motion of Vogue Dry Cleaning Company to Dismiss Bill—Filed March 6, 1929

. . . . . .

Comes now the defendant Vogue Dry Cleaning Company, by its attorneys, and moves the Court to dismiss the Bill of Complaint filed in the above-entitled cause.

Selig C. Brez, Simon, Koenigsberger, Young & Brez, Attorneys for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies".

3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

4. That said Bill does not set up any unlawful or illegal combination or conspiracy.

Selig C. Brez, Simon, Koenigsberger, Young & Brez,
Attorneys for said Defendant.

Service of the aforegoing Motion, and receipt of copy [fol. 9] thereof, acknowledged the 6th day of March, 1929.
Russell Hardy, Special Assistant to the Attorney General.

In Supreme Court of District of Columbia

Motion of Samuel Goldenberg to Dismiss Bill—Filed March 6, 1929

* * * * * * *

Comes now the defendant Samuel Goldenberg, by his attorneys, and moves the Court to dismiss the Bill of Complaint filed in the above-entitled cause.

Selig C. Brez, Simon, Koenigsberger, Young & Brez,
Attorneys for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies."

3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

4. That said Bill does not set up any unlawful or illegal [fol. 10] combination or conspiracy.

Selig C. Brez, Simon, Koenigsberger, Young & Brez,
Attorneys for said Defendant.

Service of the aforegoing Motion, and receipt of copy thereof, acknowledged the 6th day of March, 1929.

Russell Hardy, Special Assistant to the Attorney General.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF ARCADE SUNSHINE COMPANY TO DISMISS BILL—Filed March 11, 1929

* * * * * * *

Comes now the defendant Arcade Sunshine Company, by its attorney, and moves the Court to dismiss the Bill of Complaint filed in the above entitled cause.

A. L. Newmeyer, Attorney for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of

the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies".

[fol. 11] 3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

4. That said Bill does not set up any unlawful or illegal combination or conspiracy.

A. L. Newmyer, Attorney for said Defendant.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF HARRY VINER TO DISMISS BILL—Filed March 11, 1929

* * * * * * *

Comes now the defendant Harry Viner, by his attorney, and moves the Court to dismiss the Bill of Complaint filed in the above entitled cause.

A. L. Newmyer, Attorney for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies".

3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

[fol. 12] 4. That said Bill does not set up any unlawful or illegal combination or conspiracy.

A. L. Newmyer, Attorney for said Defendant.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF ATLANTIC CLEANERS AND DYERS, INC., TO DISMISS BILL—Filed March 12, 1929

* * * * * * *

Comes now the defendant, Atlantic Cleaners and Dyers, Inc., by its attorneys, and moves the Court to dismiss the Bill of Complaint filed in the above-entitled cause.

Hamilton & Hamilton, by Edmund Brady, Attorneys for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies".

3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

4. That said Bill does not set up any unlawful or illegal combination or conspiracy.

Hamilton & Hamilton, by Edmund Brady, Attorneys for said Defendant.

[fol. 13] IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF SAMUEL RUBENSTEIN ET AL. TO DISMISS PETITION—Filed March 12, 1929

* * * * * * *

Come now defendants, Samuel Rubenstein and Charles Rubenstein, by their attorneys, and move to dismiss the petition herein, and for grounds of this motion say:

That it appears upon the face of the petition that these defendants are not engaged in trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraint and Monopolies", or of the common law.

Dale D. Drain, Peelle, Ogilby & Lesh, Attorneys for Defendants Samuel Rubenstein and Charles Rubenstein.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF JOHN F. MCCARRON TO DISMISS BILL—Filed March 12, 1929

* * * * * * *

Comes now the defendant, John F. McCarron, by his attorneys, and moves the Court to dismiss the Bill of Complaint in the above-entitled cause.

Hamilton & Hamilton, by E. Brady, Attorneys for said Defendant.

Note

Among the matters intended to be argued in support of the foregoing Motion are the following:

[fol. 14] 1. That said Bill does not set up a cause of action cognizable in equity.

2. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies."

3. That said Bill does not set up a combination or conspiracy in restraint of trade or commerce in violation of the common law.

4. That said Bill does not set up any unlawful or illegal combination or conspiracy.

Hamilton & Hamilton, by E. Brady, Attorneys for said Defendant.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION OF GLOBE DRY CLEANERS AND DYERS ET AL. TO DISMISS PETITION—Filed March 21, 1929

* * * * * * *

Come now the defendants, Globe Dry Cleaners and Dyers, Inc., and Samuel Grozbean, and move the Court to dismiss the petition of the plaintiff filed in this cause, on the grounds, among others—

1. That said petition states no cause of action cognizable in equity.

2. That the bill does not allege an unlawful combination or conspiracy.

3. That the combination or conspiracy alleged is not shown to be in violation of the Anti-Trust Laws of the [fol. 15] United States, or of the Common Law.

Leckie, Cox & Sherier, Attorneys for Defendants Globe Dry Cleaners and Dyers, Inc., and Samuel Grozbean.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDUM OPINION—Filed July 24, 1929

* * * * * * *

I think that the bill in this case will lie both under the statute and the principles of the common law.

The motion to dismiss will be overruled and the defendants allowed thirty days within which to answer.

Bailey, J.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER DENYING MOTIONS TO DISMISS PETITION—Filed July 29, 1929

* * * * * * *

Heretofore this cause came on to be heard on motions to dismiss the petition, and was argued by counsel; and

thereupon, upon consideration thereof, it is ordered, adjudged and decreed:

1. That the motions to dismiss be and the same are hereby denied;

2. That each of the defendants file its answer herein within thirty days after service of a copy of this order.

Peyton Gordon, Justice.

July 29, 1929.

[fol. 16] IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDED ANSWER OF ATLANTIC CLEANERS AND DYERS, INC., ET AL.—Filed November 5, 1931

* * * * * * *

Defendants Atlantic Cleaners and Dyers, Inc., a Corporation, and John F. McCarron, by leave of court first had and obtained, file this amended answer to the petition herein, and respectfully show to the Court:

1-13. These defendants admit the allegations of paragraphs 1 to 13 inclusive of said petition, insofar as same relate to them.

14. Answering the 14th paragraph of said petition, these defendants admit that for a long time prior to the filing thereof, the defendant McCarron has actively participated in the management, direction and control of the affairs and business of the defendant Atlantic Cleaners and Dyers, Inc. These defendants deny that the defendant Atlantic Cleaners and Dyers, Inc., has been, or now is engaged in trade or commerce. These defendants neither admit or deny that the defendant McCarron has acted for the defendant Atlantic Cleaners and Dyers, Inc., in the making of agreements, or in the doing of the acts or things alleged in said petition, and, if material herein, they call for strict proof thereof.

15. Answering the 15th paragraph of said petition, these defendants admit that the corporation defendants and the defendants Samuel Rubenstein and Charles Rubenstein

have been, and are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, at plants located therein, in part, in pursuance of contracts and engagements between them and the so-called retail cleaners and dyers. These defendants deny that the [fol. 17] corporation defendants herein, and the defendants Samuel Rubenstein and Charles Rubenstein together do substantially all of the business of cleaning, dyeing, or otherwise renovating clothing in the District of Columbia. In this connection, these defendants state that there are many persons other than the defendants in this suit who are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, and further state, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia.

16. These defendants are advised that they are not required to answer the 16th paragraph of said petition.

17. Answering the 17th paragraph of said petition, these defendants deny that they have been, or now are, within the District of Columbia or elsewhere, engaged in a combination or conspiracy in restraint of trade or commerce, and further answering said paragraph, these defendants deny that they, or either of them have been, or now are, engaged in trade or commerce.

18-19-20. Answering the 18th, 19th and 20th paragraphs of said petition, these defendants neither admit nor deny the allegations thereof, in whole or in part, and, if material herein, they demand strict proof thereof.

Further answering said petition, these defendants allege that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said petition relate, consists solely of the performance of labor and the rendering of a service in cleaning, dyeing, and, or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not [fol. 18] trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" or of the common law.

Wherefore these defendants pray that said petition be dismissed as to them.

Atlantic Cleaners and Dyers, Inc., and John F. McCarron, by John F. McCarron, Pres. John F. McCarron. Peelle, Ogilby & Lesh, Dale D. Drain, Attorneys for Atlantic Cleaners and Dyers, Inc., and John F. McCarron.

Fiat of Chief Justice Wheat

Let the within amended answer be filed.

Alfred A. Wheat, Chief Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDED ANSWER OF GLOBE DRY CLEANERS AND DYERS, A CORPORATION, AND SAMUEL GROZBEAN—Filed November 5, 1931

* * * * * * *

1-13. These defendants admit the allegations of paragraphs 1 to 13 inclusive, in so far as same relate to them.

14. Answering the 14th paragraph of said Bill, the said defendants admit that for a long time prior to the filing thereof, the defendant Grozbean has actively participated in the management, direction and control of the affairs and business of the defendant Globe Dry Cleaners and Dyers; the said defendants deny that the defendant Globe Dry Cleaners and Dyers has been or is engaged in trade or commerce; the said defendants neither admit nor deny that the defendant Grozbean has acted for the defendant Globe Dry Cleaners and Dyers in the making of the agreements, or in the doing of the acts or things alleged in said Bill, and, if [fol. 19] material herein, they call for strict proof thereof.

15. Answering the 15th paragraph of said Bill, these defendants admit that they have been and are engaged in the business of cleaning, dyeing and otherwise renovating clothing in the District of Columbia in plants located therein, in part, in pursuance of contracts and engagements between them and so-called retail cleaners and dyers; the

said defendants deny that the corporation defendants hereto and the individual defendants together do substantially all of the business of cleaning, dyeing or otherwise renovating clothing in the District of Columbia. In this connection, these defendants state that there are many persons other than the defendants in this suit who are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, and further state, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia. These defendants deny that the defendant Globe Dry Cleaners and Dyers is engaged principally in business as a wholesaler.

16. Answering the 16th paragraph of said Bill, these defendants aver that they are advised that the same states merely a conclusion of law and that they are not required to make answer thereunto.

17. Answering the 17th paragraph of said Bill, these defendants deny that they have been or now are, at or within the District of Columbia, engaged in a combination or conspiracy in restraint of, or which has unlawfully restrained trade and commerce, and further answering said paragraph the said defendants deny that they, or either of [fol. 20] them, have been or are engaged in trade or commerce.

18, 19, and 20. Answering the 18th, 19th and 20th paragraphs of said Bill, the said defendants neither admit nor deny the allegations thereof, in whole or in part, and, if material herein, they demand strict proof thereof.

Further answering said Bill, these defendants allege that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said Bill relate, consists solely of the performance of labor and the rendering of a service in cleaning, dyeing and/or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" or of the common law.

Wherefore these defendants pray that said Bill be dismissed as to them.

Globe Dry Cleaners and Dyers, by Samuel Grozbean, President. Samuel Grozbean. Leckie & Sherier, by Joseph T. Sherier, Attorneys for Globe Dry Cleaners and Dyers and Samuel Grozbean.

Leave to file granted.

Alfred A. Wheat, Chief Justice.

[fol. 21] IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDED ANSWER OF ARCADE-SUNSHINE COMPANY, A CORPORATION, AND HARRY VINER—Filed November 5, 1931

1-13. These defendants admit the allegations of paragraphs 1 to 13 inclusive, insofar as same relate to them.

14. Answering the 14th paragraph (unnumbered) of said petition, the said defendants admit that for a long time prior to the filing thereof, the defendant Viner has actively participated in the management, direction and control of the affairs and business of the defendant, Arcade-Sunshine Company; the said defendants deny that the defendant Arcade-Sunshine Company has been or is engaged in trade or commerce; the said defendants neither admit or deny that the defendant Viner has acted for the defendant, Arcade-Sunshine Company in the making of the agreements, or in the doing of the acts or things alleged in said Bill, and, if material herein, they call for strict proof thereof.

15. Answering the 15th paragraph (unnumbered) the said defendants admit that the corporation defendants and the defendants Samuel Rubenstein and Charles Rubenstein have been and are engaged in the business of cleaning, dyeing and otherwise renovating clothing in the District of Columbia in plants located therein, in part, in pursuance of contracts and engagements between them and so-called retail cleaners and dyers; the said defendants deny that the corporation defendants hereto and the defendants Samuel

Rubenstein and Charles Rubenstein together do substantially all of the business of cleaning, dyeing or otherwise renovating clothing in the District of Columbia; In this connection, these defendants state that there are many per-
[fol. 22] sons other than the defendants in this suit who are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, and further state, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia. The said defendants deny that the defendant, Arcade-Sunshine Company is engaged principally in business as a wholesaler.

16. Answering the 16th paragraph (unnumbered) of said petition the said defendants aver that they are advised that the same states merely a conclusion of law and that they are not required to make answer thereunto.

17. Answering the 17th paragraph (unnumbered) of said petition, the said defendants deny that they have been or now are, at or within the District of Columbia, engaged in a combination of conspiracy in restraint of, or which has unlawfully restrained trade and commerce, and further answering said paragraph the said defendants deny that they, or either of them, have been or are engaged in trade or commerce.

18, 19 and 20. Answering the 18th, 19th and 20th paragraphs (unnumbered) of said petition, the said defendants neither admit or deny the allegations thereof, in whole or in part, and, if material herein, they demand strict proof thereof.

Further answering said petition, these defendants allege that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said petition relate, consists solely of the performance of labor and the rendering of a service in cleaning, dyeing, and/or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not trade or commerce within the meaning of the Act of Con-
[fol. 23] gress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" or of the common law.

Wherefore these defendants pray that said petition be dismissed as to them.

Arcade-Sunshine Company, by Harry Viner, President. Harry Viner. Alvin L. Newmyer, Attorney for Arcade Sunshine Company and Harry Viner.

Fiat of Chief Justice Wheat

Nov. 5, 1931.

Let the within amended answer be filed.

Alfred A. Wheat, Chief Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDED ANSWER OF VOGUE DRY CLEANING COMPANY, A CORPORATION, AND SAMUEL GOLDENBERG—Filed November 5, 1931

* * * * * * *

1-13. These defendants admit the allegations of Paragraphs 1 to 13 inclusive, in so far as same relate to them.

14. Answering the 14th Paragraph of said Bill, the said defendants admit that for a long time prior to the filing thereof, the defendant Goldenberg has actively participated in the management, direction and control of the affairs and business of the defendant Vogue Dry Cleaning Company; the said defendants deny that the defendant Vogue Dry Cleaning Company has been or is engaged in trade or commerce; the said defendants neither admit or deny that the defendant Goldenberg has acted for the defendant Vogue Dry Cleaning Company in the making of [fol. 24] the agreements, or in the doing of the acts or things alleged in said Bill, and, if material herein, they call for strict proof thereof.

15. Answering the 15th Paragraph of said Bill, the said defendants admit that the corporation defendants and the defendants Samuel Rubenstein and Charles Rubenstein have been and are engaged in the business of cleaning, dyeing and otherwise renovating clothing in the District of

Columbia in plants located therein, in part, in pursuance of contracts and engagements between them and so-called retail cleaners and dyers; the said defendants deny that the corporation defendants hereto and the defendants Samuel Rubenstein and Charles Rubenstein together do substantially all of the business of cleaning, dyeing or otherwise renovating clothing in the District of Columbia. In this connection, these defendants state that there are many persons other than the defendants in this suit who are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, and further state, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia. The said defendants deny that the defendant Vogue Dry Cleaning Company is engaged principally in business as a wholesaler.

16. Answering the 16th Paragraph of said Bill, the said defendants aver that they are advised that the same states merely a conclusion of law and that they are not required to make answer thereunto.

17. Answering the 17th Paragraph of said Bill, the said defendants deny that they have been or now are, at or within the District of Columbia, engaged in a combination or conspiracy in restraint of, or which has unlawfully [fol. 25] restrained trade and commerce, and further answering said Paragraph the said defendants deny that they, or either of them, have been or are engaged in trade or commerce.

18, 19 and 20. Answering the 18th, 19th and 20th Paragraphs of said Bill, the said defendants neither admit or deny the allegations thereof, in whole or in part, and, if material herein, they demand strict proof thereof.

Further answering said Petition, these defendants allege that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said Petition relate, consist solely of the performance of labor and the rendering of a service in cleaning, dyeing, and/or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade

and Commerce Against Unlawful Restraints and Monopolies'' or of the common law.

Wherefore these defendants pray that said Petition be dismissed as to them.

Vogue Dry Cleaning Company, by Samuel Goldenberg. Samuel Goldenberg. Selig C. Brez, Simon, Koenigsberger, Young & Brez, Attorneys for Vogue Dry Cleaning Company and Samuel Goldenberg.

Fiat of Chief Justice Wheat

Nov. 5, 1931.

Let this amended answer be filed.

Alfred A. Wheat, Chief Justice.

[fol. 26] In Supreme Court of District of Columbia

Amended Answer of Samuel Rubenstein and Charles Rubenstein—Filed November 5, 1931

* * * * * * *

Defendants Samuel Rubenstein and Charles Rubenstein, by leave of court first had and obtained, file this amended answer to the petition herein, and respectfully show to the Court:

1-13. These defendants admit the allegations of paragraphs 1 to 13 inclusive of said petition, insofar as same relate to them.

14. These defendants state that they are without knowledge concerning the averments contained in the fourteenth paragraph of the petition except that they deny that any of the defendants are engaged in trade or commerce.

15. Answering the 15th paragraph of said petition, these defendants admit that they and the corporation defendants have been and are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, at plants located therein, in part, in pursuance of contracts and engagements between them and so-called

retail cleaners and dyers. These defendants deny that they and the corporation defendants herein together do substantially all of the business of cleaning, dyeing, or otherwise renovating clothing in the District of Columbia. In this connection, these defendants state that there are many persons other than the defendants in this suit who are engaged in the business of cleaning, dyeing, and otherwise renovating clothing in the District of Columbia, and further state, on information and belief, that these other persons do at least one-half of the said business in the District of Columbia.

[fol. 27] 16. These defendants are advised that they are not required to answer the 16th paragraph of said petition.

17. Answering the 17th paragraph of said petition, these defendants deny that they have been, or now are, within the District of Columbia or elsewhere, engaged in a combination or conspiracy in restraint of trade or commerce, and further answering said paragraph, these defendants deny that they, or either of them have been, or now are, engaged in trade or commerce.

18-19-20. Answering the 18th, 19th and 20th paragraphs of said petition; these defendants neither admit nor deny the allegations thereof, in whole or in part, and, if material herein, they demand strict proof thereof.

Further answering said petition, these defendants allege that the business of dry cleaning and dyeing, in which they are engaged, and to which the charges in said petition relate, consists solely of the performance of labor and the rendering of a service in cleaning, dyeing, and, or renovating wearing apparel and other articles which have passed into the hands of the ultimate consumer thereof, and is not trade or commerce within the meaning of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" or of the common law.

Wherefore these defendants pray that said petition be dismissed as to them.

Samuel Rubenstein, Charles Rubenstein. Peelle, Ogilby & Lesh, Dale D. Drain, Attorneys for Samuel Rubenstein and Charles Rubenstein.

[fol. 28] Fiat of Chief Justice Wheat

Let the within amended answer be filed.

Alfred A. Wheat, Chief Justice.

In Supreme Court of District of Columbia

Motion of Plaintiff to Strike Amended Answers—Filed November 9, 1931

Comes now the plaintiff and moves the Court to strike the amended answers of Defendants, Atlantic Cleaners and Dyers, Inc., John F. McCarron, Globe Dry Cleaners and Dyers, Samuel Grozbean, Arcade-Sunshine Co., Harry Viner, Vogue Dry Cleaning Company, Samuel Goldenberg, Samuel Rubenstein and Charles Rubenstein, for that said amended answers are insufficient in law to constitute a defense to the cause of action alleged in the petition herein.

Dated November 5, 1931.

John Lord O'Brian, the Assistant to the Attorney General. Russell Hardy, Geo. P. Alt, Special Assistants to the Attorney General.

Let this motion be filed, nunc pro tunc, as of Nov. 5, 1931.

Alfred A. Wheat, Chief Justice.

To Hamilton & Hamilton, Esqs., Attorneys for defendants Atlantic Cleaners and Dyers, Inc., and John F. McCarron; Leckie, Cox and Sherier, Esqs., Attorneys for defendants Globe Dry Cleaners and Dyers and Samuel Grozbean; Alvin L. Newmyer, Esq., Attorney for defendants Arcade-Sunshine Company and Harry Viner; Selig C. [fol. 29] Brez, Esq., Simon, Koenigsberger, Young & Brez, Esqs., Attorneys for defendants Vogue Dry Cleaning Company and Samuel Goldenberg; Dale D. Drain, Esq., Peelle, Ogilby & Lesh, Esq., Attorneys for defendants Samuel Rubenstein and Charles Rubenstein.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

DECREE—Filed November 5, 1931

* * * * * * *

This cause came on to be heard at this term on plaintiff's motion to strike the amended answers of defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, and the Court being of opinion that the amended answers of said defendants are insufficient in law to constitute a defense to the cause of action alleged in the petition, it is, by the Court, this 5th day of November, 1931,

Ordered, adjudged and decreed that the amended answers of defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, be and the same are hereby stricken from the files.

And said defendants, by their attorneys, appearing in open Court and electing to stand upon their said amended answers to the petition, it is, by the Court, upon consideration thereof, this 5th day of November, 1931, further

Ordered, adjudged and decreed as follows:

[fol. 30] 1. That this Court has jurisdiction of the subject-matter and of all the parties hereto; that the petition herein states a good cause of action against the defendants herein under the Act of Congress approved July 2, 1890, entitled "'An Act To protect trade and commerce against unlawful restraints and monopolies,'' and under the common law.

2. That the petition herein be and the same is hereby dismissed as to the defendants, Majestic Cleaning and Dye Works, Inc., Isidore Janet, The Mutual Cleaning Company and Joseph A. Geier.

3. That the defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles

Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, have been and are engaged in a combination and conspiracy in restraint of trade and commerce in the District of Columbia in cleaning, dyeing and/or otherwise renovating clothes, as described in the petition, in violation of the Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," and of the common law.

4. That the defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, their officers, agents, servants, employees, and attorneys, and all those in active concert or participation with them, be and they are hereby perpetually enjoined and restrained from—

(a) Further carrying out the combination and conspiracy in restraint of trade and commerce in the District of [fol. 31] Columbia in cleaning, dyeing, and/or otherwise renovating clothes, herein mentioned;

(b) Agreeing upon or making effective any assignment or allotment of the business of retail dyers and cleaners of clothing;

(c) Agreeing upon prices, terms and conditions to be charged and received by them for cleaning, dyeing and renovating clothes;

(d) Doing any acts to effectuate or enable them to observe any agreement for an assignment or allotment of the business of retail dyers and cleaners of clothing, or any agreement upon prices, terms and conditions to be charged and received by them for cleaning, dyeing and renovating clothes.

5. That jurisdiction of this cause be retained by this Court for the purpose of enforcing this decree.

6. That plaintiff recover from said defendants its costs, to be taxed by the Clerk and that it have execution therefor.

Alfred A. Wheat, Chief Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

PETITION FOR APPEAL, ASSIGNMENTS OF ERROR, AND PRAYER FOR REVERSAL—Filed December 29, 1931

* * * * * * * *

Considering themselves aggrieved by the decision of the Supreme Court of the District of Columbia, Holding an Equity Court, entered on the 5th day of November, 1931, the defendants therein, Atlantic Cleaners and Dyers, Inc., A Corporation, Glove Dry Cleaners and Dyers, A Corporation, Arcade-Sunshine Co., A Corporation, Vogue Dry [fol. 32] Cleaning Company, A Corporation, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, hereby pray that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

Assignment of Errors

And the said Atlantic Cleaners and Dyers, Inc., A Corporation, Globe Dry Cleaners and Dyers, A Corporation, Arcade-Sunshine Co., A Corporation, Vogue Dry Cleaning Company, A Corporation, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg assign the following errors in the record and proceedings in the said case and say that the Supreme Court of the District of Columbia erred in the following respects and particulars:

1. In denying defendants' motions to dismiss the plaintiff's petition and in holding that said petition states a cause of action against these defendants or any of them under the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," or under the common law.

2. In holding that defendants' amended answers are insufficient in law to constitute a defense to the alleged cause of action set forth in plaintiff's petition and in granting plaintiff's motion to strike said amended answers.

3. In holding that the business or service of cleaning, dyeing and/or renovating wearing apparel or other articles which have passed into the hands of the ultimate

consumer thereof, in which these defendants are engaged and to which the charges in plaintiff's petition relate, is [fol. 33] trade or commerce under the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," or under the common law.

4. In entering the decree of injunction herein against these defendants or any of them.

Prayer for Reversal

For which errors the defendants, Atlantic Cleaners and Dyers, Inc., A Corporation, Globe Dry Cleaners and Dyers, A Corporation, Arcade-Sunshine Co., A Corporation, Vogue Dry Cleaning Company, A Corporation, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, pray that the said decree of the Supreme Court of the District of Columbia dated November 5, 1931, in the above-entitled cause be reversed and a decree rendered in favor of the said defendants, and for costs.

Dale D. Drain, Attorney for Defendants and Appellants Atlantic Cleaners and Dyers, Inc., a Corporation; Globe Dry Cleaners and Dyers, a Corporation; Samuel Rubenstein, Charles Rubenstein, John F. McCarron, and Samuel Grozbean. Alvin L. Newmyer, Attorney for Defendants and Appellants Arcade-Sunshine Co., a Corporation, and Harry Viner. Selig C. Brez, Attorney for Defendants and Appellants Vogue Dry Cleaning Company, a Corporation, and Samuel Goldenberg.

[fol. 34] In Supreme Court of District of Columbia

Order Allowing Appeal—Filed January 2, 1932

* * * * * * * *

The defendants and appellants in the above-entitled suit, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered in said suit by this Court on the 5th day of November, 1931, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors and prayer for

reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided; it is, this 2d day of January, 1932,

Ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from this Court in said cause, as provided by law, and it is further ordered that the Clerk of this Court shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within thirty (30) days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of One hundred Dollars ($100.00/100).

Jesse C. Adkins, Acting Chief Justice of the Supreme Court of the District of Columbia.

[fols. 35 & 36] Bond on appeal for $100.00, approved and filed January 4, 1932, omitted in printing.

[fol. 37] Citation, in usual form, showing service on John Lord O'Brian, filed January 4, 1932, omitted in printing.

[fol. 38] In Supreme Court of District of Columbia

Stipulation as to Transcript of Record—Filed January 11, 1932

* * * * * * * * *

It is stipulated and agreed by and between the attorneys for the respective parties to the above-entitled cause, that the Clerk of the Court shall include in the transcript of record on appeal in said cause the following:

1. Petition or bill of complaint;
2. Motion of defendant, Atlantic Cleaners and Dyers, Inc., to dismiss petition or bill of complaint;
3. Motion of defendants, Globe Dry Cleaners and Dyers and Samuel Grozbean, to dismiss petition or bill of complaint;
4. Motion of defendant, Arcade-Sunshine Co., to dismiss petition or bill of complaint;

5. Motion of defendant, Vogue Dry Cleaning Company, to dismiss petition or bill of complaint;

6. Motion of defendants, Samuel Rubenstein and Charles Rubenstein, to dismiss petition or bill of complaint;

7. Motion of defendant, John F. McCarron, to dismiss petition or bill of complaint;

8. Motion of defendant, Harry Viner, to dismiss petition or bill of complaint;

9. Motion of defendant, Samuel Goldenberg, to dismiss petition or bill of complaint;

10. Memorandum opinion of Mr. Justice Bailey;

11. Order denying motion to dismiss the petition;

12. Amended answer of defendants, Atlantic Cleaners and Dyers, Inc. and John F. McCarron;

13. Amended answer of defendants, Globe Dry Cleanres and Dyers and Samuel Grozbean;

14. Amended answer of defendants, Arcade-Sunshine Co. and Harry Viner;

15. Amended answer of defendants, Vogue Dry Cleaning Company and Samuel Goldenberg;

[fol. 39] 16. Amended answer of defendants, Samuel Rubenstein and Charles Rubenstein;

17. Motion of plaintiff to strike amended answers of said defendants;

18. Decree;

19. Petition for Appeal, Assignment of Errors and Prayer for Reversal;

20. Order Allowing Appeal;

21. Bond on Appeal;

22. Citation on Appeal;

23. This Stipulation.

Dated January 11, 1932.

Dale D. Drain, Attorney for Defendants and Appellants Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Samuel Rubenstein, Charles Rubenstein. John F. McCarron, and Samuel Grozbean. Alvin L. Newmyer, Attorney for Defendants and Appellants Arcade-Sunshine Co. and Harry Viner. Selig C. Brez, Attorney for Defendants and Appellants Vogue Dry Cleaning Company and Samuel Goldenberg. John Lord O'Brian, The Assistant to the Attorney General of the United States.

[fol. 40] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 41] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON, AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Feb. 3, 1932

Come now the appellants and adopt their assignments of error as their statement of the points to be relied upon, and [fols. 42 & 43] represent that the whole of the record, as filed, is necessary for the consideration of the case.

Dale D. Drain, Attorney for Appellants Atlantic Cleaners and Dyers, Inc., a Corporation; Globe Dry Cleaners and Dyers, a Corporation; Samuel Rubenstein, Charles Rubenstein, John F. McCarron, and Samuel Grozbean. Alvin L. Newmyer, Attorney for Appellants Arcade-Sunshine Co., a Corporation, and Harry Viner. Selig C. Brez, Attorney for Appellants Vogue Dry Cleaning Company, a Corporation, and Samuel Goldenberg.

Service of the foregoing statement of points to be relied upon and designation of the parts of the record to be printed, by receipt of copy thereof, is acknowledged, this 3d day of February, 1932.

Thomas D. Thacher, Solicitor General. (I)

[fol. 44] [File endorsement omitted.]

Endorsed on cover: File No. 36,481. District of Columbia Supreme Court. Term No. 667. Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., et al., appellants, vs. The United States of America. Filed January 30, 1932. File No. 36,481.